

JOINT POWERS AGREEMENT

BETWEEN THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY AND THE GLORIETA ESTATES MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION CONCERNING JOINT EFFORTS TO PROVIDE REGIONAL WATER TRANSMISSION FACILITIES TO SERVE THE COMMUNITY OF GLORIETA ESTATES

This Joint Powers Agreement is made this ____ day of _____, 2009, pursuant to the New Mexico Joint Powers Agreement Act, NMSA 1978, Sections 11-1-1 et seq. (as amended), by and between the Board of County Commissioners of Santa Fe County, New Mexico (hereinafter referred to as "the County"), a political subdivision of the State of New Mexico, and the Glorieta Estates Mutual Domestic Water Association (hereinafter referred to as "the Association"), a mutual domestic water consumers association and a political subdivision of the State of New Mexico organized under the Sanitary Projects Act, NMSA 1978, Sections 3-29-1 through 3-29-20.

RECITALS:

WHEREAS, the Association was organized to respond to the critical need of the community for a safe and reliable domestic water supply, which need has been recognized by the New Mexico Department of Environment, the New Mexico Department of Health, and the County.

WHEREAS, the Association has served the community of Glorieta Estates for thirty-six years but needs to expand its system with additional water mains and storage in the Glorieta Estates area to reliably and adequately serve residents and provide sufficient fire protection and domestic water use capacity.

WHEREAS, the Association has commissioned a design to address the Glorieta Estates community's water problems, received funding for construction for a phase of the plan, and acquired property and sufficient water rights to facilitate expansion of its system.

WHEREAS, the Association has secured a grant of \$75,000 from the New Mexico Legislature and has obligated \$64,000 of its own funds for a total of \$139,000, but the Association needs an additional \$96,000 to complete the initial construction of its water system expansion.

WHEREAS, the County is willing to assist with the development of water system solutions to address water supply needs in the Glorieta Estates area, and the Association desires to receive such assistance from the County and to become a partner with the County in water infrastructure planning, construction and maintenance of water infrastructure for the Glorieta Estates community.

WHEREAS, new water transmission lines as well as a master meter installed to connect to a neighboring system, pressure reducing valves, and a 40,000 gallon water storage tank are good candidates for County participation as a regional partner, because it is well situated to integrate these additions to possible future regional solutions to address water problems in the area, and because joint ownership of such facilities will promote and facilitate regional solutions to water problems while preserving local control of local distribution systems.

WHEREAS, if such assistance from the County were received, the Association would be able to complete this portion of the construction, which would extend and improve the existing system, including providing for redundancy and ensuring that customers receive safe, cost-efficient and reliable water service.

WHEREAS, pursuant to the New Mexico Joint Powers Agreements Act, the parties are authorized to enter into agreements for the purpose of jointly exercising any power common to the parties.

WHEREAS, both the Association and the County have statutory authority to own, operate and maintain public water utility systems.

WHEREAS, it is in the interest of the public health, safety and welfare for the parties to cooperate as set forth herein.

NOW THEREFORE, the parties mutually agree as follows:

1. **COUNTY'S PURCHASE OF AN UNDIVIDED SHARE OF THE WATER SYSTEM INFRASTRUCTURE AND ASSOCIATED COMPONENTS**

1.1 The County agrees to purchase an undivided interest in the following, collectively, "the Water System Infrastructure": approximately 200 feet of well transmission line; pressure reducing valves; and a 40,000 gallon water storage tank (or tanks comprising at least 40,000 gallons of storage capacity). The Water System Infrastructure is depicted on Table 5 of the Design Memorandum for the proposed water system improvements. Should there be sufficient funding available such that the Water System Infrastructure may be extended to include approximately 1000 feet of waterline transmission lines and fire hydrants with appurtenances, then the County would have a proportional interest in these components as well.

1.2 The County shall purchase an interest in the property items described in the Water System Infrastructure project in the amount of Ninety-Six Thousand Dollars (\$96,000). Any subsequent purchase of an interest in the Association's system shall be accomplished by amendment to this Agreement.

1.3 The County's ownership interest in the Water System Infrastructure at any specific time shall be established according to the formula set forth in Section 3.2 of this Agreement.

2. **IMPROVEMENTS TO THE ASSOCIATION'S SYSTEM**

2.1 With the contribution provided by the County's participation as set forth in Section 1, the Association shall improve its water system by adding the Water System Infrastructure to its system. As stated in Section 1.1, should there be sufficient funding available, the Water System Infrastructure project may be extended by the addition of approximately 1000 feet of waterline transmission lines and fire hydrants with appurtenances.

2.2 As referenced in Section 2.1, should funding allow, fire hydrants will be installed on the water transmission lines (two or three will be considered as funding allows). The Association agrees to consult with the County Fire Marshall concerning the location and design of the fire hydrant system.

2.3 If funding permits, water meters shall be installed as part of this project, or at sometime in the near future, at all residences on the Association's system. Separate funding is being sought for this component, and ownership by the Association or joint ownership with the County will be determined based on contributed funding.

2.4 All improvements described herein shall be designed consistent with sound engineering principles. The improvements described herein shall be constructed in a good workmanlike manner with reasonable construction supervision.

3. **OWNERSHIP OF IMPROVEMENTS**

3.1 All water system improvements constructed by the Association with previous funding, except those improvements described in Section 1 of this Agreement, shall be owned exclusively by the Association.

3.2 The Water System Infrastructure and associated components described in Section 1.1 shall be owned jointly by the Association and the County. The ownership interest of each party

shall be determined by the proportion of each party's contributions to the total cost of the Water System Infrastructure and associated components. Contributions to total cost shall include engineering/design, construction and capital (materials) costs. Each time the County or the Association makes a contribution to the Water System Infrastructure and associated components, the interest of each shall be adjusted to reflect the contribution. As specified in Section 4.2, additional infrastructure and/or project components may be added with proportional additional interest in the Water System Infrastructure and associated components by the County so long as this is reflected in an amendment to this Agreement. Any disposition of the Water System Infrastructure and associated components requires approval of both parties hereto.

4. FINANCING OF IMPROVEMENTS

4.1 All Water System Infrastructure and associated components described herein have been or will be constructed using revenue from three sources: (i) appropriations from the New Mexico Legislature in the amount of \$75,000, counted as contribution from the Association; (ii) funds provided by the Association in the amount of \$64,000; and (iii) funds provided by the County through this Agreement in the amount of \$96,000.

4.2 The County may purchase an additional interest in the Water System Infrastructure and associated components. Any such purchase shall become effective only after an amendment to this Agreement has been approved by the parties and approved by the Department of Finance and Administration and, if applicable, by the New Mexico State Board of Finance. The County may make direct expenditures ("in kind" contributions) to construct improvements to the Water System Infrastructure described herein, so long as the appropriate amendment to this Agreement and required approvals are obtained. In the latter situation, the Association shall provide access

or easements, as appropriate, to support construction of improvements, access to design and/or engineering work as appropriate, and other items to support the work.

4.3 If additional funds become available that enable improvements to the Water System Infrastructure and associated components that were not constructed because funds were not available, the parties may nevertheless proceed to design, engineer and construct improvements with other funds, but such arrangement must be described specifically in an amendment to this Agreement. If additional contributions from the County are required to support additional design, engineering and construction work, the parties may proceed by appropriate amendment to this Agreement.

5. PROCUREMENT AND ADMINISTRATIVE SERVICES

5.1 The Association shall, pursuant to the New Mexico Procurement Code, NMSA 1978, Section 13-1-1 et seq. and applicable procurement regulations, procure all the design, engineering, and construction services necessary to construct the improvements described herein, except those provided by the County (in kind) and described herein. The Association shall provide all necessary administrative services related to the foregoing. The County shall have the right to examine all documents related to the foregoing; and the Association shall have the right to examine any documents that the County produces related to the foregoing.

6. REDUNDANCY AND RELIABILITY

6.1 Once the improvements described herein are made, the Association shall use the improvements to provide system redundancy and reliability, to improve operations of its entire system, and to transport water across the system for delivery purposes. All of the operations and activities pursuant to this Section shall be reviewed and approved by the Technical Committee, *see* Section 8, for technical feasibility. In no event shall the Association's operations pursuant to

this Section be permitted to affect water quality for the Association's customers, affect delivery of water to Association's customers, or impact service provided to the Association's customers.

7. WATER RATES AND CHARGES

7.1 The Association shall set its water rates and charges for its membership and, upon the request of the County for informational purposes, the Association shall provide the County with its current water rates and charges.

8. TECHNICAL COMMITTEE

8.1 A Technical Committee consisting of four persons is hereby created. Each party shall appoint two representatives to the Technical Committee; persons appointed to the Technical Committee should have technical expertise as a result of education, training or experience, in the design, operation or maintenance of water systems.

8.2 The Technical Committee shall be charged with ensuring that the governing bodies of the parties are provided with regular reports on the progress of the work of this Agreement and shall provide a forum for intergovernmental discussions necessary to the continued operations of the water system.

8.3 The Technical Committee shall meet as often as necessary given the situation, but shall meet at least biannually.

9. OPERATION AND MAINTENANCE OF THE SYSTEM

9.1 The Association shall bear all the costs of day-to-day operation of the system, including but not limited to electrical costs associated with the well owned by the Association and its related infrastructure, pumping to fill the storage tank(s), maintenance of water rights, new capital expenditures and permitting. The County shall have no responsibility to contribute

to these costs, which shall be borne solely by the Association. The County shall bear sole responsibility for maintenance and testing of the fire hydrants.

9.2 The parties hereto shall jointly bear the expense of routine maintenance of the Water System Infrastructure and associated components as set forth herein, and shall jointly bear the cost of capital (materials) expenditures related to the same improvements, in proportion to each party's ownership interest. Any routine maintenance and capital expenditure related to the Water System Infrastructure and associated components described herein shall be discussed by the Technical Committee prior to making the expenditure, which shall provide a recommendation to the parties hereto concerning the proposed maintenance or capital expenditure. If the Technical Committee recommends making the expenditure, the Association shall make the maintenance or capital improvement. The County shall reimburse the Association for its pro-rata share of the work, according to its ownership interest in the Water System Infrastructure and associated components at that time. If the maintenance or capital expenditure is not approved by the Technical Committee, the County may contribute to these costs but shall not be obligated to do so.

10. SERVICE AREA

10.1 The parties recognize that the service area boundaries of the Association have been established that include portions of Santa Fe County in the community area of Glorieta Estates. Any proposed changes to the service area by the Association or the County shall be discussed and agreed to by both parties to ensure continuing good relations between the parties

11. PARTICIPATION IN REGIONAL WATER PLANNING AND CONJUNCTIVE USE STRATEGIES

11.1 The Association and County shall participate in regional water planning efforts to include the County's sustainability and conjunctive use strategies, with the goal of assuring a

reliable, safe and sustainable supply of water for the Association's customers and for the County at large, to communicate and coordinate concerning water resource management and to work towards sensible regional system integration and management. The Association shall fully cooperate in these efforts, though this does not explicitly obligate the Association to fund such County-wide planning efforts.

11.2 The Association and the County shall work together to promote the sustainability of those ground water resources within the Upper Pecos River Basin watershed and the region.

11.3 The Association shall cooperate with the County's Regional Plan, and if appropriate, the County's 40-Year Water Plan, the County's General Plan, and other relevant planning documents. The Association shall fully cooperate in these efforts, though this does not explicitly obligate the Association to fund such County-wide planning efforts.

12. FIRE PROTECTION

12.1 The Association, in consultation with the County Fire Marshall and other appropriate emergency management authorities, shall provide appropriate water pressure and volume to fire hydrants within its service area for fire protection. The Association shall not levy any charge or fee for the fire protection provided pursuant to this Section, except as set forth in Section 2, herein.

13. APPROPRIATED FUNDS

13.1 In the event funds are not appropriated in a given year for either party's obligations described herein, either party will have the option of terminating this Agreement as of the date when funds are exhausted; provided, that this Agreement shall not terminate while the County owns an interest in the Water System Infrastructure improvements described herein.

14. BOOKS AND RECORDS

14.1 The Association shall maintain adequate and correct accounts related to the continuing operation of the Water System Infrastructure improvements described herein, and of the operation and maintenance of the Association, which accounts shall be open to inspection at any reasonable time by the parties hereto, their accountants or their agents.

14.2 The Association shall prepare and present such reports as may be required by law, regulation or contract to any governmental agency.

14.3 The Association shall provide to the County a report setting forth the uses of the funds granted by the County.

14.4 There shall be strict accountability of all receipts and disbursements by the parties hereto.

15. TERMINATION

15.1 This Agreement shall be in full force and effect upon the execution of this Agreement by all of the parties and approval by the Department of Finance and Administration of the State of New Mexico, and approval, as necessary, by the New Mexico State Board of Finance, and shall continue in full force and effect, subject to amendments, until terminated by the parties pursuant to this Agreement.

15.2 Any party's participation in this Agreement may be terminated by one hundred and eighty (180) days advance written notice or upon notice as provided in Section 27; provided, that this Agreement shall not terminate while the County owns an interest in the improvements described herein.

15.3 Upon termination of this Agreement by the parties, the powers granted under this Agreement shall continue to the extent necessary to make an effective disposition of property and a full accounting.

15.4 Upon termination of this Agreement, all funds of the County that are held by the Association, and that have not yet been applied against purchase of the improvements described herein, shall be returned to the County. Any other surplus funds remaining upon termination of this Agreement shall be returned to the parties in proportion to the contributions made.

16. AMENDMENT

16.1 This Agreement may be amended by the parties from time to time, but any amendment shall be in writing, executed by all parties and approved by the Department of Finance and Administration.

17. SEVERABILITY

17.1 If any one or more of the provisions contained in this Agreement shall be for any reason held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect other provisions hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been a part hereof.

18. INSURANCE

18.1 The parties hereto shall carry public liability insurance coverage consistent with the responsibilities of each entity under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 *et seq.*

18.2 The parties shall, in addition, provide workers' compensation coverage for employees and carry property damage insurance on the equipment, buildings, facilities or personalty of any kind that comprise the improvements described herein.

18.3 The expense of obtaining and maintaining the required insurance shall be each party's sole obligation.

18.4 The insurance provided for under this Section shall be maintained in full force and effect throughout the duration of this Agreement.

18.5 Each party shall obtain the insurance coverage described herein from a reliable insurance company or, alternatively, from a risk self-retention pool such as that provided by the New Mexico Association of Counties, or approved policy of self-insurance. A copy of any insurance policy shall be provided to the other party at the party's request.

19. STRICT ACCOUNTABILITY, RECORDS, AUDITS, REPORTS

19.1 The parties hereto shall be strictly accountable for all receipts and disbursements, and shall maintain adequate, complete and correct records and statements pertaining to receipts, disbursements, and other financial matters pertaining to the improvements described herein.

19.2 Each year that the Association is required to perform an audit by an independent certified public accountant, the audit shall be provided to the parties and shall be made available to the public.

19.3 The records and statements prepared by the Association pursuant to this Section shall be open to inspection at any reasonable time by the parties hereto, their accountants and agents.

19.4 The Association shall prepare and present such reports as may be required by law, regulation or contract to any governmental agency, and shall also render to the parties, at reasonable intervals, such reports and accounting as the parties may from time to time request.

20. LIABILITY

20.1 No party hereto shall be responsible for liability incurred as a result of one of the other party's acts or omissions in connection with this Agreement. Any liability incurred in

connection with this Agreement shall be subject to the privileges and immunities of the New Mexico Tort Claims Act, as amended.

21. THIRD PARTY BENEFICIARY

21.1 The parties to this Agreement do not and do not intend to create in the public, any member thereof, or any person, any rights whatsoever such as, but not limited to, the rights of a third-party beneficiary, or to authorize anyone not a party to this Agreement to maintain a suit for any claim whatsoever pursuant to the provisions of this Agreement.

22. DISPUTE RESOLUTION

22.1 The parties to this Agreement may use any and all methods of dispute resolution, up to and including court action or binding arbitration, to resolve any conflicts arising under this Agreement, the expenses of which shall be shared equally. Disputes shall be first discussed by representatives of each party having the authority, if necessary, to bind the party that they represent. Such representatives shall use their best efforts to amicably and promptly resolve the dispute. If the parties are unable to resolve the dispute through informal mechanisms or mediation within thirty days of the occurrence of the event or circumstances giving rise to the dispute, either party may give notice to the other party proposing that the dispute be submitted to binding arbitration. Any dispute requiring notice shall be reported to the next meeting of the respective County and Association governing bodies. If one party refuses to submit to binding arbitration, then binding arbitration cannot be used by the parties to resolve their dispute. If both governing bodies agree on binding arbitration, it shall proceed in accordance with the model guidelines of the American Arbitration Association. Such notice shall contain the name of a proposed arbitrator, and in the event the other party does not agree with the proposed arbitrator, the model guidelines of the American Arbitration Association shall be used to select

an arbitrator and govern the conduct of the arbitration, rendering of an award and enforcement of the award consistent with New Mexico law. Within 60 days of notice an arbitrator shall be appointed and within 120 days of notice the arbitrator shall prepare an award. The arbitrator's award shall be binding on the parties.

22.2 If the parties do not agree on binding arbitration, then either party may seek redress in a state court of competent jurisdiction.

23. ENTIRE AGREEMENT

23.1 This Agreement contains the entire Agreement between the parties hereto with regard to the matters set forth herein.

24. BINDING EFFECT

24.1 This Agreement shall be binding upon and inure to the benefit of the parties and their respective representatives, successors, and assigns.

25. OTHER DOCUMENTS

25.1 The parties agree to execute such additional agreements as may reasonably be required from time to time to carry out the provisions of this Agreement.

26. LAW

26.1 The laws of the State of New Mexico shall govern this Agreement.

27. NOTICES

27.1 Any notice, demand, request, or information authorized or related to this Agreement shall be deemed to have been given if mailed (return receipt requested), hand delivered or faxed as follows:

To the County: Santa Fe County Water/Wastewater Operations Section
Santa Fe County
102 Grant Avenue
Santa Fe, N.M. 87501

Phone: 992-9872
Fax: 992-8421

With a copy to:

County Manager
Santa Fe County
P.O. Box 276
Santa Fe, N.M. 87504
Phone: 986-6200
Fax: 986-6362

County Attorney
Santa Fe County
P.O. Box 276
Santa Fe, N.M. 87504
Phone: 986-6279
Fax: 986-6362

To the Association: Anna Hamilton, President, or
Marion Markham, Water Master
Glorieta Estates Mutual Domestic Water Consumers Association
P.O. Box 94
Glorieta, NM 87535
Phone: 505-690-6647 or 505-757-3964

Attorney for Glorieta Estates Mutual Domestic Water Consumers Assoc.:

Steven Asher
Phone: (505) 982-1155

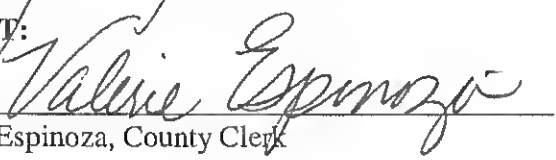
IN WITNESS WHEREOF, the parties hereto have set their hands by their duly authorized officers, agents or representatives effective as of the date and year first written above.

**THE BOARD OF COUNTY COMMISSIONERS OF
SANTAFE COUNTY, NEW MEXICO**

By: _____


Michael D. Anaya, Chair

ATTEST: _____


Valerie Espinoza, County Clerk

Approved as to form:


Stephen C. Ross, County Attorney

GLORIETA ESTATES MUTUAL DOMESTIC
WATER CONSUMERS ASSOCIATION

By: Anna Hamilton
Anna Hamilton, President

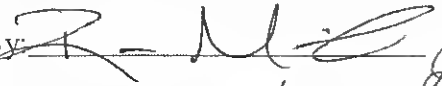
ATTEST: Parula Lindstrom
Secretary

Approved as to form.

Steven Asiter
Association's Attorney

STEVEN ASITER

APPROVED BY THE DEPARTMENT
OF FINANCE AND ADMINISTRATION

By:  *JA 11/16/10*
Dep. Secretary
(Title)
11/16/10
(Date)

APPROVED BY THE NEW MEXICO
STATE BOARD OF FINANCE

By: _____